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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,964	10/28/2003	Patrick J. Crowley SR.	03-028-PC	4452
7590	05/05/2004		EXAMINER	
Gary Lambert 92 State Street Boston, MA 02109			HARTMANN, GARY S	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/694,964

**Applicant(s)**

CROWLEY, PATRICK J.

**Examiner**

Gary Hartmann

**Art Unit**

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/28/3</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-15, drawn to an apparatus, classified in class 404, subclass 6.

II. Claims 16-19, drawn to a method, classified in class 404, subclass 72.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the method does not require any of the structure of the apparatus.

2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Melissa Patangia on April 30, 2004 a provisional election was made without traverse to prosecute the invention of I, claims 1-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

*Drawings*

4. The drawings are objected to because the lines are not uniformly thick and well defined.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 7, 8, 10, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Lowndes (U.S. Patent 5,536,109). Lowndes discloses an apparatus having a plurality of spikes (40) with blocks (11, 12, 13) secured thereto. There is a support (60) and a vertical user engageable member (65) secured to the proximal end of the support (Figure 9, for example).

Regarding claim 4, the blocks are secured on two supports (wheels 66, for example).

The engageable member (65) includes a handle.

Regarding claims 8 and 14, the upper surface of housing (60) covers the spikes and is deemed to meet the recitation of compressible material.

*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5, 6-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reisman (U.S. Patent 5,322,385) in view of Lowndes (U.S. Patent 5,536,109). Reisman discloses an apparatus having a plurality of spikes (12) secured to at least one block (10). There is a support (18, 30). Reisman does not teach a handle; however, it is well known to utilize a handle in order to more easily manipulate an apparatus, as exemplified by Lowndes (see 102(b) rejection above). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the handle of Lowndes with the apparatus of Reisman in order to more easily manipulate the apparatus.

The plurality of spikes are optionally disposed on a plurality of blocks.

A plurality of blocks are secured to a plurality of supports (Figure 6, for example).

The ends of the supports may be raised.

The spikes are covered by foam.

9. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reisman and Lowndes as applied above, and further in view of Anglade (France Patent 2 605 655). Anglade teaches horizontally extending distal ends of supports into an open position by a deploying mechanism (Figure 4, for example). Further, it is well known to horizontally extend tire piercing apparatuses by a deploying device, as is also taught by Lowndes. Therefore, it

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would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the deploying mechanism of Anglade in order to configure the apparatus of Reisman into the desired deployed state, as is well known in the art.

***Conclusion***

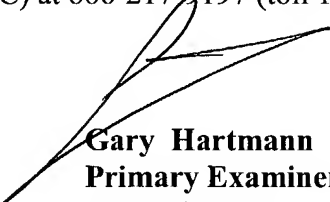
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**Gary Hartmann  
Primary Examiner  
Art Unit 3671**